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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|-----------------------|---------------------|------------------|
| 10/066,549 | 02/05/2002 | Donald Edward Swetlik | 054806-5001 | 3326 |
| 9629 | 7590 | 02/16/2005 | EXAMINER | |
| MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004 | | | EDWARDS JR, TIMOTHY | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 2635 | |

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,549

Applicant(s)

SWETLIK ET AL.

Examiner

Timothy Edwards, Jr.

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2002.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-36 is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☒ Claim(s) 2-12 is/are objected to.
- 8) ☒ Claim(s) 37 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-36, drawn to programming a patient-monitoring device, classified in class 340, subclass 870.16.
- II. Claim 37, drawn to business method, classified in class 705, subclass 3, 28, 406.

The inventions are distinct, each from the other because of the following reasons:

Inventions II and I are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are invention I claims programming a monitoring device. Invention II claims a method of doing business. These inventions are unrelated and unusable together.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

A telephone call was made to Louis Beardell on February 9, 2005 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 CFR 1.143).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pincus [US 2003/0032446].

Considering claim 1, Pincus discloses a medical telemetry system comprising, a) a patient monitor (56) and a first communication element in communication with patient monitor (see paragraph [0015] and fig 2, item 58); except, 1) Pincus does not specifically recite a central station in communication with the first communication element; however, fig 1 shows, a wireless tracking network (WTN) comprising, a cell controller (12), a hospital information system (20), a server (18) and several devices in bi-directional communication. One of ordinary skill in the art would readily recognize in a hospital environment there would be a central station having means to correlate and relay data to its appropriate location or where the information is most needed (i.e. a server). One of ordinary skill in the art would readily recognize in a hospital environment

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devices used to monitor patient would have patient information associated with the device and the patient information and associated services rendered to a patient would be stored at a central station for billing purposes. Therefore, it would have been obvious to one of ordinary skill in the art the Pincus system would comprise a central station because Pincus system is used in a hospital environment and Pincus is concern with patient monitoring; b) a second communication element in communication with the first communication element and the central station (see paragraph [0017]); except, 2) Pincus does not specifically recite a programming station having a user interface including a predetermined portion of a display assigned to a communication channel. Pincus recites reprogramming each sensor or tag with different asset to include a selective protocol (see paragraph [0004]). Pincus shows in fig 6 a display means for changing the asset of the sensor/tag, (see paragraph [0028] and fig 6, item 106). One of ordinary skill in the art would readily recognize the display means of Pincus would have means to assign a communication channel to the device because Pincus discloses displaying the asset assigned to a transmitting device and reprogramming each transmitting device (see paragraph [0018]).

Allowable Subject Matter

Claim 2 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 3-12 are objected to because they depend on claim 2.

Claims 13-36 are allowed.

The following is an examiner's statement of reasons for allowance: with respect to claims 13, 14, 31, 34-36 in the environment of a computer driven system for processing biomedical data the closes prior art Kumar et al '471 teaches the use of a disposable sensor comprising a transmitter for transmitting biomedical data. However, Kumar fails to teach or suggest a configuration device for configuring each monitoring device to a channel and for configuring the channel to a region on the display, such that the each region on the display is mapped to a specific monitoring device.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Braun et al '940 teaches the adaptation of each channel to any biomedical sensor. Kleinschmidt et al '709, New, jr. et al '829, Baessler '621, Cocatre-Zilgien '862, Phelps, Sr. et al '825, and Chaco '903 also, disclose the use of disposable transmitters.

1. Any inquiry concerning this communication should be directed to Examiner Timothy Edwards at telephone number (571) 272-3067. The examiner can normally be

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reached on Tuesday-Friday, 8:00 a.m.-6:00 p.m. The examiner cannot be reached on Mondays.

If attempt to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Horabik, can be reached on (571) 272-3068.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-4700, Mon-Fri., 8:30 a.m.-5:00 p.m.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

Washington, D.C. 20231

or fax to:

(703), 872-9314 (for formal communications intended for entry)

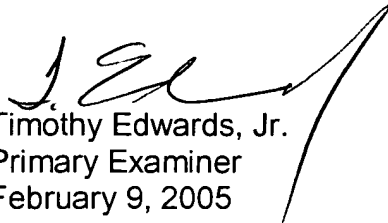
Or:

(for informal or draft communications, please label "PROPOSED"

or "DRAFT")

Hand-delivered responses should be brought to Crystal Park II, 2121

Crystal Drive, Arlington, VA, Sixth Floor, (Receptionist).


Timothy Edwards, Jr.
Primary Examiner
February 9, 2005